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In re Application of :  
Lowery et al : Decision on Petition  
Serial No. : 09/545,199 :  
Filed : 6 April 2000 :  
Attorney Docket No.: 28341/6227.NCP :

This letter is in response to the Petition under 37 C.F.R. 1.181 filed on 11 June 2004. The delay in acting upon this petition is regretted.

**BACKGROUND**

The Office mailed out a Restriction Requirement on 8/28/01; a non-final Office action on 1/30/02; a final Office action on 9/23/02. Applicants filed a request for continued examination on 3/31/2004. The Office then sent out a non-final Office action on 6/13/02 and a final action on 4/8/04, which considered the amendment filed 19 December 2003, in which claim 7 was amended as follows:

7. (Previously amended) An attenuated Pasteurellaceae bacteria comprising a mutation in the [atpG] protein coding region of an atpG gene as set forth in SEQ ID NO: 3 or a species homolog thereof, said mutation resulting in decreased atpG biological activity, wherein the decreased atpG biological activity attenuates the Pasteurellaceae bacteria.

The final office action of 4/8/04 included one new rejection of claim 7 under 35 USC 102(b) as being anticipated by Gwinn.

The petition to review the finality of Office action was filed on 11 June 2004.

**DISCUSSION**

The application, file history and petition have been considered carefully. In the Petition, Applicants requests reconsideration of the finality of the Office action.

Applicants are correct that the amendment to claim 7 did not substantially change the scope of the claim such that the new rejection of Gwinn would have been necessitated by amendment.

The phrase "species homolog thereof" refers back to the protein coding region of an atpG gene as set forth in SEQ ID NO 3. The mutation is therefor either in the protein coding region of an atpG gene as set forth in SEQ ID NO 3 or in the protein coding region of an atpG gene homolog.

#### **DECISION**

The petition under 37 CFR 1.144 filed on 04 June 2004 is **GRANTED** for the reasons set forth above.

The finality of the Office action mailed 8 April 2004 is withdrawn.

Applicants remain under obligation to respond within a timely manner to the Office action mailed 8 April 2004.

There is no fee required for the filing of this petition.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-872-9306.



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